

**UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION**

In the Matter of:

TIMOTHY J. MORIARTY

**former officer of Rochester
Community Savings Bank,
Rochester, New York**

Order No. NE99-01

Date: March 1, 1999

**STIPULATION AND CONSENT TO THE ISSUANCE
OF AN ORDER TO CEASE AND DESIST
FOR AFFIRMATIVE RELIEF**

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Timothy J. Moriarty ("Moriarty"), who at relevant times was an officer and employee of Rochester Community Savings Bank, Rochester, New York ("Rochester Savings"), that grounds exist to initiate administrative cease-and-desist proceedings against him pursuant to 12 U.S.C. § 1818(b)¹; and

WHEREAS, Moriarty desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings and, without admitting or denying that such grounds exist, or the Findings of Fact or opinions and conclusions of the OTS,

except as to Jurisdiction (paragraph 1, below), which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction

(a) Rochester Savings is a "savings and loan holding company" within the meaning of 12 U.S.C. § 1813(q)(4) and (w)(3) and 12 U.S.C. § 1467a(a)(1)(D). Accordingly, it is a savings and loan holding company as that term is defined in 12 U.S.C. § 1818(b)(9).

(b) Moriarty, as a former officer and employee of Rochester Savings, is deemed to be an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years of the date hereof. See 12 U.S.C. § 1813(i)(3).

(c) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain administrative proceedings against such a savings and loan holding company or its institution-affiliated parties. Therefore, Moriarty is subject to the jurisdiction of the OTS to initiate and maintain administrative proceedings against him pursuant to 12 U.S.C. § 1818. The Director of the OTS has delegated to the Regional Director of the Northeast Region of the OTS or his designee ("Regional Director") the authority to issue orders where the individual subject to the order has consented to its issuance.

2. OTS Findings of Fact. The OTS finds that:

(a) During 1993, while serving as Rochester Savings' vice president for financial management, Moriarty obtained non-public information concerning a proposed

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

acquisition or merger of Rochester Savings with another financial entity. After learning this information, Moriarty engaged in several trades of Rochester Savings' securities.

Moriarty's trades yielded him a profit of \$52,562.50.

(b) The Securities and Exchange Commission ("SEC") brought a civil action against Moriarty in June 1996 for violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder. The SEC and Moriarty reached a settlement in March 1997, in which Moriarty neither admitted nor denied the allegations of the SEC's Complaint. The settlement includes the issuance of a Final Judgment against Moriarty enjoining him, among other things, from violating Section 10(b) and Rule 10b-5 in the future, and requiring him to repay \$52,562.50, plus prejudgment interest of \$19,608.06.

3. Consent. Moriarty consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief ("Order"). Moriarty further agrees to comply with the terms of the Order upon issuance, and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued pursuant to 12 U.S.C. § 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers. Moriarty waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by 12 U.S.C. § 1818(b);

(b) the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(b);

(c) the right to seek judicial review of the Order including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs and expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412.

6. Scope of Release; Other Governmental Actions Not Affected.

(a) Upon the OTS's issuance of the accompanying Order, following the OTS's acceptance of this Stipulation executed by Moriarty, the OTS does hereby forever release and discharge Moriarty from all potential claims and charges that have been or might have been asserted by the OTS based on the alleged violations summarized in the OTS Findings of Fact set forth in paragraph 2 of this Stipulation. Moriarty understands that the release provided by this paragraph is limited *solely* to administrative actions the OTS could take based on the above-alleged violations and unsafe or unsound practices summarized in the above OTS Findings of Fact. This release shall not preclude or affect any right of the OTS to determine and ensure compliance with the terms and provisions of the Order and the Stipulation.

(b) Moriarty acknowledges and agrees that his consent to the issuance of the Order is *solely* for the purpose of resolving certain potential OTS administrative enforcement charges as provided by paragraph 2 above, and does not otherwise release, discharge, compromise, settle, resolve, or in any way affect any actions, charges against, or liability of Moriarty that may be or have been brought by another governmental entity.

7. Miscellaneous.


- (a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors and successors;
- (c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;
- (d) The terms of this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- (e) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, Timothy J. Moriarty executes this Stipulation and Consent to the Issuance of a Consent Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

Accepted on the date of the Order by:
OFFICE OF THRIFT SUPERVISION


TIMOTHY J. MORIARTY

Date: 2/23/99

By: 
Robert C. Albanese
Regional Director, Northeast Region

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ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Timothy J. Moriarty ("Moriarty") has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief ("Stipulation"); and

WHEREAS, Moriarty, by his execution of the accompanying Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist for Affirmative Relief ("Order"), pursuant to 12 U.S.C. § 1818(b)¹; and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue cease and desist orders on behalf of the OTS where respondents have consented to the issuance of such orders;

NOW, THEREFORE, IT IS ORDERED that:

1. Compliance. Moriarty shall not, directly or indirectly, through the use of any means or instrumentality of interstate commerce, or of the mails, or of the facilities of a national securities exchange:

- (i) employ any device, scheme, or artifice to defraud,
- (ii) make any untrue statement of a material fact or
omitting to state a material fact necessary in order to
make the statements made, in light of the circumstances
under which they were made, not misleading, or
- (iii) engage in any transaction, act, practice, or course
of business that operates or would operate as a fraud
or deceit upon any person, in connection with the purchase
or sale of any security of a Banking Institution.

2. Securities Ownership. Moriarty shall cease and desist from owning, directly or indirectly, legally or beneficially, any class of stock in a Banking Institution as to which he is an institution-affiliated party, except that:

(a) Moriarty may own the minimum amount of a class of stock that is necessary, pursuant to the by-laws of a Banking Institution, to serve as an officer or director of that entity; and

(b) Moriarty may own stock of a Banking Institution obtained through (i) participation in a tax qualified employee stock benefit plan as defined in 12 C.F.R.

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

§ 563b.2(a)(40), or (ii) purchase or receipt of any security of the Banking Institution by which Moriarty is employed either directly from the issuer, or pursuant to a public or private offering of its securities made by said Banking Institution, or exercise of any option, right or warrant for the securities of said Banking Institution granted to Moriarty by said Banking Institution; provided that he gives written notice to the Board of Directors of said Banking Institution, or to a person designated by the Board of Directors, prior to executing any purchase or sale of such securities. In addition, Moriarty shall obtain written certification of delivery of any such written notice to the Board of Directors of said Banking Institution, or its designee, and shall make such certifications available to the OTS upon request.

3. Disclosure. Prior to accepting, commencing or continuing any position as an institution-affiliated party with any Banking Institution, Moriarty shall provide a copy of the Stipulation and of this Order to the Board of Directors of such institution and, at the same time, shall provide written confirmation to the OTS Regional Director, Northeast Region, 10 Exchange Place, 18th Floor, Jersey City, NJ 07302 that he has given such notice.

4. Responses to Requests. Moriarty shall promptly and appropriately respond, without the need for service of a subpoena, to any request from the OTS for documents or testimony that the OTS reasonably requests to demonstrate compliance with this Order.

5. Definitions. For the purposes of this Order –

(a) "Institution-affiliated party" has the meaning set forth in 12 U.S.C. § 1813(u).

(b) "Banking Institution" refers to any and all of the following: any "insured depository institution" as that term is defined at 12 U.S.C. § 1813(c) (including but not limited to banks and savings associations); any direct or indirect subsidiary of an insured depository institution, whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C. § 1752(7); any "savings and loan holding company" within the meaning of 12 U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such holding companies, whether wholly or partly owned.

6. Stipulation. The Stipulation is made a part hereof and is incorporated herein by this reference.

7. Effectiveness of Order. This Order is and shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: Robert C. Albanese
Robert C. Albanese
Regional Director, Northeast Region